

DOCUMENT RESUME

03124 - [A2443590]

Claim Settlement--District of Columbia Vendor Stand Program for the Blind. B-189449. August 31, 1977. 3 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Issue Area: Accounting and Financial Reporting (2800).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Other General Government (806).

Organization Concerned: District of Columbia: Dept. of Human Resources.

Authority: Randolph-Sheppard Act (40 Stat. 1559, as amended; 20 U.S.C. 107 et seq. (Supp. V)). District of Columbia Appropriation Act [of] 1977 (P.L. 94-446; 90 Stat. 1490; 90 Stat. 1494). Rehabilitation Act of 1973 (P.L. 93-112; 87 Stat. 355). Randolph-Sheppard Act Amendments of 1974 (P.L. 93-516, title 2; 88 Stat. 1617; 88 Stat. 1622). Appropriation Act [of] 1977. P.L. 93-198. D.C. Code, sec. 47-138.

A certifying officer of the District of Columbia requested determination of the source of funding for an award made to three individuals in settlement of their claim to a proportionate share of the profits derived from the District of Columbia's vendor stand program for the blind. Payment of the claim which was ordered by an administrative hearing officer of the District of Columbia's Department of Human Resources (DHR) was payable from the appropriations available to DHR during the periods in question for the operation of St. Elizabeth's Hospital, where the vending machines in question were located. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-189449

DATE:

AUG 31 1977

MATTER OF: **Claims Settlement-District of Columbia Vendor  
Stam Program for the Blind**

DIGEST: Payment of claim by blind vendors for vending machine proceeds which was ordered by an administrative hearing officer of the District of Columbia's Department of Human Resources (DHR) is payable from the appropriations available to DHR during the periods in question for the operation of St. Elizabeth's Hospital. See P.C. Code § 47-136. The appropriation for paying judgments against the District would not be available since the Court of Appeals did not render a judgment against the District but merely remanded the case to DHR for further administrative hearings.

We have been asked by a certifying officer of the District of Columbia to determine the source of funding for an award made to three individuals in settlement of their claims to an appropriate share of the profits derived from the District of Columbia's vendor stamp program for the blind at St. Elizabeth's Hospital for 1964 thru 1969.

The facts in this case are essentially set out in the District Government's response to a petition for a writ of mandamus in the District of Columbia Court of Appeals in the case of TERRY v. District of Columbia Department of Human Resources, Docket No. 11662, dated March 3, 1977. In that response, it was stated:

"\* \* \* In Terry et al. v. District of Columbia Department of Human Resources, 535 A.2d 249 (D.C. App. 1977) \* \* \* the Court held, in relevant part, that an administrative determination made by DHR [Department of Human Resources] in October of 1964 to reallocate vending machine proceeds in accordance with a distribution formula which the Court found was less advantageous to petitioners (who are blind vendor stamp operators with whom the vending machines are in competition) was made without notice to them, and contrary to the formula DHR expressly agreed to in 1959. The Court remanded the case to DHR for a determination whether DHR's October 1964 decision could be supported by substantial evidence \* \* \*."

The response to the petition further indicates that on May 14, 1976, a DMR hearing officer ordered DMR to take the necessary action to pay the three plaintiffs. DMR does not dispute these individuals' right to the payment. It notes, however, that the error involved occurred in the administration of the District's blind vendor program, pursuant to the Randolph-Clayton Act, 40 Stat. 1350, as amended, 20 U.S.C. § 107 (Supp. V, 1975). It points out that this is not a "money payment program" and that "the claims do not fall readily within an existing budgeted fund." In its response to the petition for summary, the District takes the position that the plaintiffs' claim that DMR "is currently possessed of funds sufficient to satisfy the petitioners' claim" does not address the issue of source of payment."

The certifying officer, states that:

"The sources of funding available are: (1) D.C. Appropriated Funds (Pub. L. 93-198, Appropriation Act, 1977 under authority of Rev. (1973) 104, (2) the program's operating funds \* \* \* under Pub. L. 93-112, or (3) a combination of 1 and 2 above."

The first reference made by the certifying officer is to section 108 of the District of Columbia Appropriation Act, 1977, Pub. L. No. 94-446, October 1, 1976, 90 Stat. 1490, 1494, which provides in part:

"There are hereby appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments which have been entered against the government of the District of Columbia \* \* \*."

The second reference made by the certifying officer is to Pub. L. No. 93-112 (September 26, 1973), the Rehabilitation Act of 1973, 87 Stat. 353, which authorizes appropriations, among other things, for funding programs benefiting the disabled.

Perhaps of more relevance is title 2 of Pub. L. No. 93-516 (December 7, 1974) 88 Stat. 1617, 1622, which is known as the Randolph-Clayton Act Amendments of 1974, 20 U.S.C. § 107 (Supp. V, 1975), and which specifically authorizes a program for vending stands for the blind in Federal buildings.

**E-109449**

In our view, the provisions of § 106 of the Appropriation Act, 1974, do not apply since the instant situation involves neither a refund nor the payment of a judgment. In this case, the Court of Appeals in its 1974 opinion simply remanded the case to the Department of Human Resources for further proceedings consistent with the court's opinion. The \$12,000 award to the three blind vendors at St. Elizabeth's Hospital was made by the DHR heeding counsel after the court's remand.

Nor do the provisions of the Rehabilitation Act of 1973 apply since the blind vendor program is not covered by that Act. The provisions of the Randolph-Sheppard Act do establish that program and the liability here involved arose out of DHR's administration of this program; however, there is no specific funding for the Randolph-Sheppard Act programs, since normally no costs should be incurred thereunder.

Given the above, it is our view that the appropriate source of payment for this award is the appropriations contained within the District of Columbia Appropriation Acts, for the periods in question which were available, among other things, to pay the operating expenses of DHR (or its predecessor agencies), since this expense was incurred during and as a result of the Department's operating St. Elizabeth's Hospital. If restoration from lapse appropriations is necessary to pay the awards, it appears that the provisions of D.C. Code § 47-136 (1973) would apply.

**R.F. KELLER**

Deputy      Comptroller General  
of the United States